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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 GITESH PATEL, *doing business as*
12 SARGAS PHARMACEUTICAL
13 ADHERENCE & COMPLIANCE (SPAC)
14 INTERNATIONAL LLC,

15 Plaintiff,

16 v.

17 CAREPOINTE LLC, et al.,

18 Defendants.

No. 1:20-cv-00040-DAD-JLT

ORDER *SUA SPONTE* DISMISSING ACTION
FOR LACK OF SUBJECT MATTER
JURISDICTION

19 On January 10, 2020, the court issued an order requiring plaintiff to show cause in writing
20 as to why this action should not be dismissed due to lack of subject matter jurisdiction. (Doc. No.
21 5.) In particular, the court noted that plaintiff asserts in his complaint that this court has subject
22 matter jurisdiction based on diversity of citizenship pursuant to 28 U.S.C. § 1332, but he alleges
23 that he is a citizen of California and that one of the defendants, Aaron Duerksen, is a resident of
24 California. (*Id.*; *see also* Doc. No. 1 at 2, 3.) A copy of the court's order was served by mail on
25 plaintiff at his address of record. Plaintiff was given fourteen (14) days to respond to the court's
26 order to show cause, and he has failed to do so.

27 "Federal courts are courts of limited jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of*
28 *Am.*, 511 U.S. 375, 377 (1994). "[S]ubject matter jurisdiction of the district court is not a

1 waivable matter and may be raised at anytime by one of the parties, by motion or in the
2 responsive pleadings, or *sua sponte* by the trial or reviewing court.” *Emrich v. Touche Ross &*
3 *Co.*, 846 F.2d 1190, 1194 n.2 (9th Cir. 1988); *see also Henderson ex rel. Henderson v. Shinseki*,
4 562 U.S. 428, 434–35 (2011) (noting objections to subject matter jurisdiction may be raised post-
5 trial). “It is to be presumed that a cause lies outside this limited jurisdiction, and the burden of
6 establishing the contrary rests upon the party asserting jurisdiction.” *Kokkonen*, 511 U.S. at 377
7 (internal citation omitted).

8 Here, plaintiff filled out a *pro se* form complaint for a civil case alleging breach of
9 contract in federal court based on diversity of citizenship, citing 28 U.S.C. § 1332. (Doc. No. 1.)
10 Under 28 U.S.C. § 1332, federal courts have jurisdiction on the basis of diversity of citizenship if
11 the matter is between citizens of different states and the amount in controversy exceeds \$75,000.
12 In fact, the form complaint that plaintiff utilized provides the following explanation and direction:

13 Under 28 U.S.C. § 1332, federal courts may hear cases in which a
14 citizen of one State sues a citizen of another State or nation and the
15 amount at stake is more than \$75,000. In that kind of case, called a
16 diversity of citizenship case, no defendant may be a citizen of the
same State as any plaintiff. Explain how these jurisdictional
requirements have been met.

17 (*Id.* at 3.) The form complaint prompts plaintiff to fill in blanks to allege his citizenship and the
18 citizenship of the defendant. (*Id.*) If the complaint names more than one defendant, the plaintiff
19 is directed to attach an additional page “providing the same information for each additional
20 defendant.” (*Id.* at 4.)

21 Plaintiff has named eight total defendants in his complaint: CarePointe LLC, John
22 Rittenour, Vizihealthcare, Aaron Duerksen, Nevada Heart and Vascular Center, Professional
23 Medical Consultants, Onpointe, and Lawrence M. Preston. (*Id.* at 1.) In the space provided by
24 the form complaint, plaintiff alleges that: (1) he is a citizen of California; (2) defendant John
25 Rittenour is a citizen of Arizona; and (3) defendant CarePointe LLC is incorporated under the
26 laws of Arizona and has its principal place of business in Arizona. (*Id.* at 3.) Despite the form
27 complaint’s prompt to provide the citizenship information of the additional defendants in an
28 attachment, plaintiff has provided only the names and addresses of those defendants.

1 Specifically, plaintiff provides an Arizona address for defendant Vizihealthcare, a Nevada address
2 for defendants Nevada Heart and Vascular Center, Professional Medical Consultants, and
3 Lawrence M. Preston, and a Tennessee address for defendant Onpointe. (*Id.* at 6.) But—fatal to
4 his assertion of diversity jurisdiction—plaintiff provides a California address for Aaron Duerksen.
5 (*Id.* at 2.) Plaintiff’s jurisdictional allegations are facially deficient because complete diversity is
6 not alleged. Further, plaintiff has failed to respond to the court’s order to show cause as to why
7 this case should not be dismissed for lack of subject matter jurisdiction.

8 Accordingly:

- 9 1. This action is dismissed, without prejudice, for lack of subject matter jurisdiction;
10 and
- 11 2. The Clerk of the Court is directed to close this case.

12 IT IS SO ORDERED.

13 Dated: **February 12, 2020**

14 
UNITED STATES DISTRICT JUDGE